



# **Second State-Wide Meeting**

## **Illinois Behavioral Health Integration Project (BHIP)**



**THURSDAY, NOVEMBER 1<sup>ST</sup>**  
**CONSENT MANAGEMENT:**  
**WHAT IS IT? WHY DOES IT MATTER?**

This presentation was prepared with funds under grant number 1UR1SMO60319-01, -02 and supplemental grant number 3UR1SMO60319-02S1 from SAMHSA/HRSA, U.S. Department of Health and Human Services. The statements, findings, conclusions and recommendation are those of the author(s) and do not necessarily reflect the view of SAMHSA/HRSA or the U.S. Department of Health and Human Services.

# What is the Purpose of a Consent Form?

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- Serves as a script to explain patient rights regarding disclosure.
- Informs patients of what they are signing to better coordinate care.
- Provides legal protections for a patient.
- Affords legal protections for a provider.
- Documents in your system who may access permissions granted.



# What is the Purpose of a Consent Form?

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- Allows patients' substance abuse treatment and mental health records to be included in ILHIE.
  - Note that a patient's other general medical records may be included in ILHIE without consent because HIPAA does not require a patient's consent to disclose for certain purposes, including treatment.
- Avoids potential for triggering significant fines and penalties.
  - 42 C.F.R. Part 2 and IMHDDCA require patients to consent in writing to release of specially-protected health information.



# 7 Elements of “Informed Consent”: BRAIDED

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1. Benefits of the action that consent is requested for
2. Risks of the action that consent is requested for
3. Alternatives to the action that consent is requested for
4. Inquiries about the consent form are the patient's, parent's, or legal guardian's right and responsibility
5. Decision to refuse to sign the consent form without penalty is the patient's, parent's, or legal guardian's right
6. Explanation of the consent form is owed the patient, parent, or legal guardian
7. Documentation that the health professional has covered each of the previous six points, usually by use of a consent form

# What is the ILHIE Consent Form?

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- Provides your patients with opportunity to allow you to share their health information with other ILHIE participants.



- Meets all requirements of HIPAA Privacy Rule, 42 C.F.R. Part 2, and the Illinois Mental Health and Developmental Disabilities Confidentiality Act (“IMHDDCA”).

# ILHIE Consent Form Allows Patients to Specify:

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- Who May Disclose
  - Which providers may disclose their information.
- What May Be Disclosed
  - Disclosure of all health information is default. However, can specify how to limit information being disclosed.
- Who May Receive
  - Which providers may receive their information.
- Purposes
  - Disclosure for treatment, care coordination, and/or health care operations
- Expiration
  - 1 year is default. However, can specify earlier date.



# Shortcomings of Current IMHDDCA

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- IMHDDCA must be modernized to:
  - Facilitate proper administration of ILHIE.
  - Avoid excluding behavioral health population from the scope and patient care benefits of using ILHIE.
- Current limitations of IMHDDCA:
  - Very specific
  - Time consuming (example: witness requirement)
  - Outdated for application of electronic medical records.
  - Establishes processes that are redundant of HIPAA, resulting in administrative inefficiency.



# Key Proposed Revision to IMHDDCA 1: Carve-Out for HIEs

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- Consent would not be required for disclosures to an HIE for HIE purposes.
  - “HIE purposes” would mean uses and disclosures for activities of an HIE that are (a) set forth in the Illinois Health Information Exchange and Technology Act and accompanying regulations, or (b) permitted under HIPAA.
- Illinois is an “opt-out” state.
- HIE would **NOT** be allowed to disclose or redisclose to law enforcement or use for law enforcement purposes.



# Key Proposed Revision to IMHDDCA 2: Expansion of Interagency Communication Exception

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- Interagency communications exception would be expanded so that consent would not be required for disclosures among:
  - Integrated health systems or members of an interdisciplinary team
  - Healthcare providers licensed or certified by DHS or HFS
  - FQHCs
  - Physicians
  - Therapists



# Key Proposed Revision to IMHDDCA 3: Elimination of Restrictive Requirements

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- Eliminate witness requirement.
- Eliminate prohibition on “blanket consent”.
- Eliminate prohibition on “advance consent”.

# Update on 42 C.F.R. Part 2

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- Working with SAMHSA on more flexible interpretation of federal regulations.
- Receiving favorable feedback on expiration provision.
- Negotiating “To Whom” section and awaiting interpretation by HHS Office of the General Counsel.





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### **Tool Kit Resources:**

- **Consent form for ILHIE Direct**
- **Consent Form Instructions**
  - **Provider Script**
- **Required Elements of Valid Consent Form**
  - **(Legal Chart)**

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